

ITEL

July 6, 1987

14029-2
RECORDATION DIV. Filed 1423

JUL 15 1987 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

Ite Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

No. 7-196A067

Date JUL 15 1987

Fee \$ 20.00

ICC Washington, D.C.

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Amendment No. 5 dated July 1, 1987, to the Lease Agreement dated April 20, 1983, between Ite Corporation, Rail Division, and McCloud River Railroad Company

Dear Ms. McGee:

On behalf of Ite Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. §11303(a), along with a check in the amount of \$20 covering the recordation fee.

Please record the above Amendment under the Lease Agreement dated April 20, 1983, between Ite Rail Corporation and McCloud River Railroad Company, which was filed with the ICC on May 27, 1983, and given Recordation No. 14029. Please cross-index this Amendment with the Equipment Trust Agreement dated January 1, 1982, between Ite Rail Corporation and First Security Bank of Utah, N.A., which was filed with the ICC on September 20, 1983, and given Recordation No. 14165.

The parties to the aforementioned instrument are listed below:

Ite Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

McCloud River Railroad Company (Lessee)
P.O. Drawer A
McCloud, California 96057

This Amendment adds to the Lease Agreement forty-five (45) 50'6", XP boxcars bearing reporting marks from within the series MR 4000-4099 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the fee receipt and ICC acknowledgment letter.

Very truly yours,

patricia schumacker

Patricia Schumacker
Legal Department

:ps
Enclosures

cc: Ginny Hanger

100 OFFICE OF
THE SECRETARY OF
TRANSPORTATION
JUL 15 2 11 PM '87
RECORDATION UNIT

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

July 16, 1987

Patricia Schumacker-Legal Department
Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on July 15, at 2:20 PM, and assigned re-recording number(s).

14029-L, 14935-E and 9936-P

Sincerely yours,

Norata R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT.

06/25/87

14029-
JUL 15 1987-2 29 PM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 5

THIS AMENDMENT NO. 5 (the "Amendment") to that certain Lease Agreement (the "Agreement") dated as of April 20, 1983, as amended, between ITEL Corporation, Rail Division and McCLOUD RIVER RAILROAD COMPANY ("Lessee") is made this 1st day of July, 1987 between ITEL RAIL CORPORATION, as successor in interest to ITEL Corporation, Rail Division, ("Lessor") and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which Lessor has leased to Lessee two hundred two (202) boxcars bearing the reporting marks from within the series MR 4041, MR 4084, MR 7177-7225, and MR 8000-8814 (together with the boxcars on the Equipment Schedule attached hereto, the "Cars").
- B. The twenty-five (25) Cars bearing reporting marks from within the series MR 8790-8814 are to be delivered to Lessee at Lessor's option.
- C. Lessor and Lessee desire to add forty-five (45) Cars bearing reporting marks from within the series MR 4000-4099 (non-sequential) to the Agreement and immediately assign such Cars, together with the Cars bearing the reporting marks MR 8790-8814, to a third party for a period of time.
- D. Lessor and Lessee desire to amend the terms of the Agreement with respect to such Cars that are to be assigned.

NOW, THEREFORE, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have the meanings defined therein when used in this Amendment.
- 2. This Amendment shall be effective upon its full execution.
- 3. Lessor shall commence delivery of the Cars on Equipment Schedule No. 6 and Lessee shall, at Lessor's expense, effect the modification of such Car to qualify for the "XP" mechanical designation of the A.A.R. Upon such modification of the final Car on Equipment Schedule No. 6, Equipment Schedule No. 6 shall be deleted in its entirety and shall be replaced by Equipment Schedule No. 6.A. attached hereto.
- 4. Equipment Schedule No. 7 attached hereto is hereby added to the Agreement.

5. With respect to the Cars on Equipment Schedules No. 6.A. and No. 7 only, Section 2 of the Agreement shall be deleted in its entirety and shall be replaced by the following:

"2. Term

- A. The Term of the Agreement with respect to each Car described on Equipment Schedules No. 6.A. and No. 7 shall commence at 12 noon on the date and at the location that such Car is remarked pursuant to Subsection 3.A., and shall expire as to all of the Cars described on each such Schedule three (3) years from the date on which the last Car on each such Schedule was remarked (the 'Initial Term').
- B. If this Agreement has not been earlier terminated and no default has occurred which is continuing, the Agreement shall automatically be extended for not more than two (2) consecutive periods of twelve (12) months each (each such period, an 'Extended Term') with respect to all of the Cars described on Equipment Schedules No. 6.A. and No. 7."

6. With respect to the Cars on Equipment Schedules No. 6.A and No. 7 only, Subsection 3.A. is replaced by the following:

"3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. Lessor shall, at its expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement at 12 noon on the date and at the location such Car is remarked ('Delivery'). After the Cars have been remarked, the Cars shall be moved to the railroad lines of the Illinois Central Gulf Railroad Company ('ICG') at no cost to Lessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ('ICC') and Association of American Railroads ('AAR') interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ('Interchange Rules'). If Lessor incurs expenses in having other railroads move Cars in accordance with this Section with Lessee's request and approval, except for any expenses incurred in the initial delivery of such Cars pursuant to this Section, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of an invoice

from Lessor. For the purposes hereof, the term 'Initial Loading' as to each Car, shall be the date such Car is first interchanged to ICG."

7. Lessor consents to Lessee entering into an assignment agreement with ICG in the form of Exhibit A attached hereto ("ICG Assignment"), provided that Lessor shall perform Lessee's duties under the ICG Assignment, except the duties described in paragraph 6 therein, which shall be performed by Lessee; and that Lessee shall, if directed by Lessor, and if and to the extent legally permissible, assign Lessee's interest in the ICG Assignment to any party designated by Lessor.
8. With respect to the Cars on Equipment Schedules No. 6.A and No. 7 only, Subsection 7.A. of the Agreement is deleted in its entirety and replaced by the following:

"7. Rent

A. Definitions

- (i) 'Per Diem Revenues' is defined as the total per diem revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, per diem, computed at : for each Car, whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (ii) 'Mileage Revenues' is defined as the total revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to mileage, computed at per mile for each Car, whether or not collected and received by Lessor and without regard to any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (iii) 'Revenues' is defined as the sum of Per Diem Revenues and Mileage Revenues.
- (iv) The 'Utilization Rate' of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Cars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars were on lease to Lessee, commencing from the Initial Loading.

(v) The 'Base Rent' is defined as

per Car per calendar year. (Such amount represents the Per Diem Revenues that would have been earned per Car had the Cars been on railroad lines other than the Eligible Lines for of the hours that such Cars were subject to the Agreement during such calendar year.) The Base Rent for any Car which is subject to the Agreement for a partial calendar year shall be prorated at per day for such partial calendar year."

9. With respect to the Cars on Equipment Schedules No. 6.A. and No. 7 only, and subject to the provision of Section 11 hereinbelow, Subsection 7.C. of the Agreement is deleted in its entirety and replaced by the following:

"7.C. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

- (i) In the event Per Diem Revenues earned in any calendar year or applicable portion thereof ('Year') are equal to or less than Lessor shall receive a sum equal to of the total Per Diem Revenues.
- (ii) In the event Per Diem Revenues earned in any Year exceed , Lessor shall receive an amount equal to the , and Lessee shall receive %) of all Per Diem Revenues received during such Year in excess of the
- (iii) Lessor shall receive an amount equal to of the Mileage Revenues earned and due from other railroad companies with respect to the Cars."

10. With respect to the Cars on Equipment Schedules No. 6.A. and No. 7 only, and subject to the provision of Section 11 hereinbelow, Subsection 7.E. of the Agreement is deleted in its entirety and replaced by the following:

"If, with respect to any calendar quarter, Revenues are less than

per Car (the 'Applicable Revenues') [which represents for the Cars in the aggregate the sum of the Base Rent for such calendar quarter and the Mileage Revenues such Cars would have earned had they travelled

during such calendar quarter], Lessor may, at any time, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual Revenues for such calendar quarter and the Applicable Revenues."

11. During the term of the ICG Assignment, Subsections 7.C., 7.D. and 7.E. of the Agreement shall be of no force or effect with respect to the Cars on Equipment Schedules No. 6.A. and No. 7 only provided that Lessee pays to Lessor all amounts due Lessee as Assignor under the ICG Assignment.
12. Except as expressly modified by this Amendment, all terms and provisions shall remain in full force and effect with respect to all of the Cars subject to the Agreement.
13. This Amendment may be executed by the parties hereto in any number of counterparts and all the counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

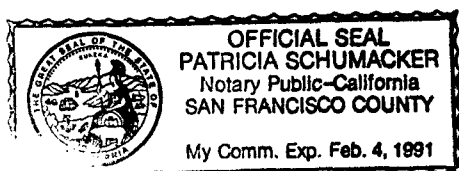
By: *[Signature]*
Title: President
Date: 7/1/87

McCLOUD RIVER RAILROAD COMPANY

By: *[Signature]*
Title: President
Date: 6/29/87

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 14th day of July, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

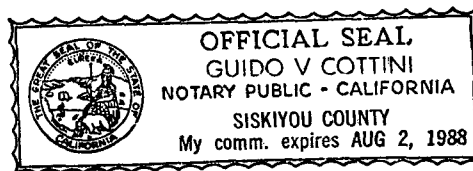


Patricia Schumacker
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF SISKIYOU)

On this 29th day of June, 1987, before me personally appeared Paul A. Zalec, to me personally known, who being by me duly sworn says that such person is President of McCloud River Railroad Company, that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Guido V. Cottini
Notary Public



EQUIPMENT SCHEDULE NO. 6.A.

Itel Rail Corporation hereby leases the following Cars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 20, 1983.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors	No. of Cars
				Inside Width	Height	Width	
XP	Box, Steel, Nailable Steel Floor, Cushioned Underframe	MR 8790- 8814	50'6"	9'6"	10'7"	2-8' Sliding Doors	25

ITEL RAIL CORPORATION

By: *J. H. Hayes*

Title: President

Date: 7/1/87

McCLOUD RIVER RAILROAD COMPANY

By: *Paul A. Zales*

Title: President

Date: 6/29/87

EQUIPMENT SCHEDULE NO. 7

Itel Rail Corporation hereby leases the following Cars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 20, 1983, as amended.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Height	Doors Width	No. of Cars
				Inside Width				
XP	Box, Steel, Nailable Steel Floor, Cushioned Underframe	MR 4006, 4007, 4015, 4016, 4017, 4018, 4019, 4020, 4022, 4023, 4025, 4026, 4029, 4030, 4031, 4032, 4035, 4038, 4039, 4040, 4043, 4045, 4046, 4048, 4050, 4051, 4054, 4055, 4057, 4060, 4062, 4063, 4068, 4069, 4071, 4072, 4073, 4074, 4075, 4079, 4081, 4085, 4091, 4094, 4098	50'6"	9'6"		10'7"	2-8' Sliding Doors	45

ITEL RAIL CORPORATION

By: _____

Title: President

Date: _____

7/1/87

MCLOUD RIVER RAILROAD COMPANY

By: _____

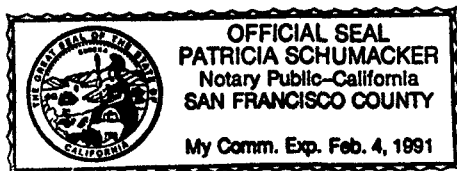
Title: President

Date: _____

6/29/87

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 1st day of July, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedules No. 6.A. and No. 7 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

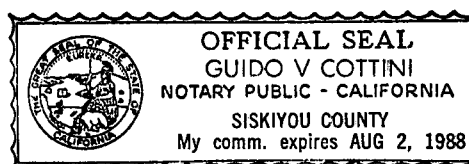


Patricia Schumacker
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF SISKIYOU)

On this 29th day of June, 1987, before me personally appeared Paul A. Zalec, to me personally known, who being by me duly sworn says that such person is President of McCloud River Railroad Company, that the foregoing Equipment Schedules No. 6.A. and No. 7 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Guido V. Cottini
Notary Public





(916) 964-2141

McCLOUD RIVER RAILROAD COMPANY

P.O. BOX 1500

McCLOUD, CALIFORNIA 96057-1500

EXHIBIT A

Mr. R. F. Seymour
Director-Car Management &
Distribution
Illinois Central Gulf
Railroad Company
233 North Michigan Avenue
Chicago, Illinois 60601

Dear Mr. Seymour:

Please accept this letter as the agreement ("Assignment Agreement") whereby McCloud River Railroad Company ("Assignor") shall supply Illinois Central Gulf Railroad Company ("Assignee") with seventy (70) fifty-foot, 70-ton, Plate B, double-door XP boxcars each having car hire values of _____ and bearing _____ the reporting marks from within the series MR 4000-4099 and MR 8790-8814 (the "Boxcars"). Assignee shall, only upon Assignor's instructions, place said Boxcars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10. WAC

The term of this Assignment Agreement ("Initial Term"), with respect to each Boxcar, shall commence on the date such Boxcar is interchanged to and accepted by Assignee ("Delivery") and shall expire as to all the Boxcars three (3) years from the earlier of (i) and the Delivery of the last Boxcar, or (ii) ninety (90) days after the Delivery of the first Boxcar. Assignee shall provide Assignor with a written notice of acceptance, either by telex or by first class U.S. mail with postage prepaid, each time a Boxcar is delivered pursuant hereto, stating the date of Delivery of such Boxcar, and addressed to: Director of Operations, McCloud River Railroad Company, 55 Francisco Street, San Francisco, CA 94133. Upon the expiration of the Initial Term, the Assignment Agreement shall continue in effect through twenty-four (24) calendar months (each such calendar month an "Extended Term"). Either party may cancel the Assignment Agreement at any time during any Extended Term upon thirty (30) days' prior written notice to the other. PAZ
6/29/87

Assignee shall (i) comply with the handling carrier's obligations under AAR Interchange Rules while the Boxcars are in Assignee's possession and (ii) fulfill its obligations upon the expiration or

termination of this Assignment Agreement as set forth herein. Assignor shall not grant to other railroads any per diem or mileage relief on the Boxcars without written consent from Assignee.

Assignee shall receive full per diem and mileage relief for each Boxcar while such Boxcar is on Assignee's railroad lines.

Assignor shall retain an amount of the per diem and mileage revenues earned by the Boxcars while off Assignee's railroad lines, equal to _____, per Boxcar (the "fixed Fee"; for all the Boxcars, the "Fixed Fees"), for each full calendar month under the Term ("Month"). For any Boxcar which is not subject to the Assignment Agreement for an entire Month, such Fixed Fee shall be prorated at _____ per day for such Boxcar during such Month. Any damaged Boxcar which has been reported to Assignor in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight ("Car Hire Rules") and is at any contract repair facility at Itel Rail Corporation's direction, shall not be subject to such Fixed Fee for each day that such Boxcar is at such contract repair facility. Any damaged Boxcar which is reported to Assignor in accordance with Car Hire Rule 8 shall not be subject to such Fixed Fee commencing as of the date that Assignee or any other railroad provides written request to Assignor for material or verbal request for disposition, through and including the applicable date such material is received by Assignee or any such other railroad or the date such Boxcar is released from the repair facility designated by Itel Rail Corporation. Effective upon the date that Assignor deems any Boxcar has been damaged beyond repair, such Fixed Fee shall not apply to such Boxcar. If, for any Month, Assignor receives for the Boxcars, in the aggregate, per diem and mileage revenues ("Revenues") that are in excess of the Fixed Fees (such excess amount the "Applicable Revenues"), then Assignor shall pay to Assignee such Applicable Revenues and provide Assignee with supporting documentation for such Applicable Revenues within five (5) months after the end of such Month. If, for any Month, Assignor receives Revenues for the Boxcars, in the aggregate, that fall below the Fixed Fees, then Assignee shall, within thirty (30) days of receiving an invoice from Assignor, such invoice to be presented together with supporting documentation no sooner than three (3) months after the end of such month, pay to Assignor the difference between the Fixed Fees and the Revenues received for such Month. In the event either Assignor or Assignee determines and demonstrates to the other that any calculation required herein was incorrect, any amounts due either party shall be remitted to such party by the other within thirty (30) days of receiving notice of such miscalculation. Any request for payment when Revenues fall below the Fixed Fees or any payment made by Assignor when Revenues exceed the Fixed Fees shall be forwarded, along with proper car-by-car detail, to: Manager, Car Accounting, Illinois Central Gulf Railroad, 233 North Michigan Avenue, Chicago, Illinois 60601-5798.

If any Boxcar returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Boxcar to Assignee. Assignor shall use its best efforts to prevent any Boxcar from being inter-

changed onto its lines during the term of this Assignment Agreement, including advising Assignor's connecting carrier that the Boxcars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Boxcars to Assignor while the Assignment Agreement is in effect. =

WAB
higher — During the term of the Assignment Agreement, Assignor may, at its expense, replace any or all of the Boxcars with similar boxcars of equal or ~~high~~ per diem value upon not less than thirty (30) days' prior written notice to Assignee.

DA2
6/29/87 Assignor is responsible for normal maintenance and repair expenses. Assignee is responsible for damage to the Boxcars while on its lines under applicable AAR Rules.


Upon termination or expiration of this Assignment Agreement, Assignee shall ensure that the Boxcars are in interchange condition, normal wear and tear excepted, and remove the Boxcars from the provisions of Car Service Rule 16 and Car Service Directive 145. Thereafter, Assignor shall grant Assignee per diem and mileage relief for each Boxcar on Assignee's railroad lines for a period not to exceed sixty (60) days after the expiration or termination date. At Assignor's option, Assignee shall either (1) provide a final outbound load for such Boxcar or (2) deliver such Boxcar, at Assignee's expense, to an interchange point on Assignee's railroad lines to be designated in writing by Assignor ten (10) days prior to the expiration of such sixty (60) day period.

Assignee's rights shall be subject and subordinate to the rights of Assignor and to the rights of any lessor, any owner or secured party under any financing agreement with respect to the Boxcars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Boxcars immediately be returned to such party.

This Assignment Agreement shall be governed by and construed according to the laws of the State of California.

Please indicate your concurrence to the above terms and conditions by signing both (2) enclosed originals and returning one to me.

Sincerely,


Paul A. Zalec
President

Concurrence By:

ILLINOIS CENTRAL GULF RAILROAD COMPANY

By: WAB

Title: Vice President Transportation